

**STATE OF FLORIDA
FLORIDA HOUSING FINANCE CORPORATION**

**FHFC CASE NO.: 2026-046VW
APPLICATION NO.: 2025-273BSA**

ACRUVA COMMUNITY FL10, LLC,

Petitioner,

vs.

FLORIDA HOUSING FINANCE
CORPORATION,

Respondent.

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FLORIDA HOUSING
FINANCE CORPORATION

AMENDED PETITION FOR WAIVER OF RULE 67-48.0072(10)(b)

ACRUVA Community FL10, LLC, a Florida limited liability company (“Petitioner”), by and through its undersigned counsel, hereby petitions the Florida Housing Finance Corporation (the “Corporation”) for a waiver of strict compliance with Rule 67-48.0072(10)(b), Florida Administrative Code (“F.A.C”) (August 27, 2024) (the “Rule”), in effect at the time Petitioner submitted its Application (as defined below) in response to the Corporation’s RFA (as defined below). Petitioner seeks a waiver of the Rule for reasons set forth below. This Petition is filed pursuant to Section 120.542, Florida Statutes, and Chapter 28-104, Florida Administrative Code. In support, Petitioner states as follows:

A. PETITIONER

1. The mailing address, telephone number and email of Petitioner is as follows:

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Deerfield Beach, Florida 33441
Telephone: (305) 901-5377
Attention: Daniel F. Acosta
Email: dacosta@acruvacp.com

2. The mailing address, telephone number and email of Petitioner’s legal counsel is as follows:

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3. On September 12, 2024, Petitioner submitted an application (the “Application”) in response to RFA 2024-205 SAIL Financing of Affordable Multifamily Housing Developments to be Used in Conjunction with Tax-Exempt Bond Financing and Non-Competitive Housing Credits (the “RFA”) requesting a State Apartment Incentive Loan an amount of \$7,750,000 (the “SAIL Loan”), an Extremely Low-Income Loan in an amount up to \$680,200 (the “ELI Loan”), a HOME-ARP Loan in the amount of \$723,900 (the “HOME Loan”), non-Competitive Housing Credits of \$1,214,988 (the “Credits”), and tax exempt bonds in the amount of \$13,000,000 (the “Bonds”), to finance the development of a 94-unit multifamily residential housing development to be located in Quincy, Florida, to be commonly known as the Residences at Cedar Creek (the “Development”). Petitioner received—and subsequently accepted—correspondence from the Corporation for the funding providing a preliminary commitment for the SAIL Loan, ELI Loan, HOME Loan, (the SAIL Loan, ELI Loan, and HOME Loan collectively referred to herein as the “Loans”) as well as the Housing Credits and Bonds. The preliminary commitment also invited Petitioner to enter credit underwriting. Pursuant to the Rule, Petitioner must receive a firm loan commitment within twelve (12) months of Petitioner accepting its invitation to enter into credit underwriting. On November 12, 2025, Petitioner requested the approval of the Corporation to extend Petitioner’s deadline to secure a firm loan commitment by six (6) months due to delays from the permitting process. On

December 12, 2025, the Corporation's Board of Directors approved Petitioner's request and approved the deadline to be extended through May 18, 2026. Petitioner paid a one (1) percent extension fee in connection with approval of the foregoing extension. On June 3, 2026, Petitioner requested the approval of the Corporation to extend Petitioner's deadline to secure a firm loan commitment by an additional six (6) months due to delays in the finalization of the Development's Credit Underwriting Report because of the need for further analysis of market conditions in the Development's small submarket. On June 26, 2026, the Corporation's Board of Directors approved Petitioner's request and approved the deadline to be extended through November 18, 2026.

B. THE RULE FROM WHICH WAIVER IS SOUGHT

4. Petitioner requests a waiver of Rule 67-48.0072(10)(b), F.A.C (effective August 27, 2024), which provides in part:

67-48.0072 Credit Underwriting and Loan Procedures.

(10) For Competitive HC, SAIL, and HOME Applicants, an appraisal report conforming to the Uniform Standards of Professional Appraisal Practice in effect at the time of the appraisal and reported in a comprehensive format, and a separate market study shall be ordered by the Credit Underwriter, at the Applicant's expense, from an appraiser qualified for the geographic area and development type not later than completion of credit underwriting. The Credit Underwriter shall review the appraisal to properly evaluate the development property's financial feasibility. Appraisals which have been ordered and submitted by third-party credit enhancers, first mortgagors or Housing Credit Syndicators and which meet the above requirements and are acceptable to the Credit Underwriter may be used instead of the appraisal referenced above. The market study must be completed by a disinterested party who is approved by the Credit Underwriter. The Credit Underwriter shall consider the market study, the Development's financial impact on Developments in the area previously funded by the Corporation, and other documentation when making its recommendation of whether to approve or disapprove a SAIL or HOME loan, a Housing Credit Allocation, or a combined SAIL loan and Housing Credit Allocation or Housing Credit Allocation and HOME loan. The Credit Underwriter

shall also review the appraisal and other market documentation to determine if the market exists to support both the demographic and income restriction set-asides committed to within the Application. For the Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have:

(b) For Developments with new construction units, an average market rental rate, based on unit mix and annualized rent concessions, of **110 percent or greater of a 60 percent of Area Median Income rental rate.**

(Emphasis added.)

C. STATUTES IMPLEMENTED BY THE RULES

5. The Rule is implementing, among other sections of the Florida Housing Finance Corporation Act (the “Act”), the statute that designated the Corporation to administer the State Apartment Incentive Loan program. See Fla. Stat. § 420.5087.

D. JUSTIFICATION FOR PETITIONER’S REQUESTED WAIVER

6. As noted above, Petitioner was awarded a preliminary commitment by the Corporation for the Development and subsequently entered into credit underwriting, which it has received two extensions for, the most recent until November 18, 2026, due to outstanding questions relating to the market study conclusions delaying the finalization of the Development’s Credit Underwriting Report. Such outstanding questions are due to Petitioner’s current market study using an energy consumption model approved by the Corporation that showed the Development does not satisfy the requirements of the Rule, instead falling short by less than three percent (3%) of the Rule’s requirement. Since issuance of the market study, Petitioner has engaged in further discussions with the Credit Underwriter and the Corporation regarding the use of the allowance schedule published by the Northwest Florida Regional Housing Authority for Gadsden County

(the “Housing Authority”), effective March 9, 2026 (the “NFRHA Allowances”), which the market study and the Credit Underwriting Report considered as an alternative utility-allowance schedule. Accordingly, Petitioner respectfully requests a waiver of the requirement that developments with new construction units demonstrate an average market rental rate, based on unit mix and annualized rent concessions, of at least 110 percent of the 60 percent Area Median Income rental rate as a condition to receiving a favorable recommendation from the Credit Underwriter.

7. As part of the credit underwriting process, Petitioner is coordinating with the Credit Underwriter and Corporation staff regarding its latest market study, specifically the study’s analysis of the extent to which market rent exceeded the estimated average restricted rent at the Development that shows the market rent is currently on average seven and three-tenths percent (7.3%) greater than the estimated average rent, short of the ten percent (10%) figure required by the Rule.

8. In communications with Corporation staff, Corporation staff advised Petitioner that approximately half of the developments awarded under the operative Request for Applications (RFA 2024-205) utilized an energy consumption model in calculating the rent advantage required by the Rule. Corporation staff noted that when such energy consumption model is completed and available at the time the market study is prepared, it is used in calculating rent advantage. Because the gap to market rate from the estimated average rent in Petitioner’s market study did not satisfy the Rule, Petitioner has been delayed in finalizing its Credit Underwriting Report for presentation to the Board for approval. Petitioner does not ask the Corporation to depart from its standard underwriting practice of relying on a Corporation-approved energy consumption model when one is available, and Petitioner accepts that the Energy Consulting, Inc. utility allowance study approved by Corporation staff on February 2, 2026, governs the rent-advantage calculation for

underwriting purposes. Petitioner's request does not turn on a dispute over calculation methodology. Petitioner instead requests the Rule be waived so that Petitioner may continue bringing the Development to closing as quickly and efficiently as possible.

9. Petitioner further notes that the NFRHA Allowances were available when the market study was prepared and acknowledges that the appraiser applied then-current Housing Authority allowances in the original market study and that the Development did not satisfy the Rule's 110 percent threshold at that time, the original study having concluded market rents of approximately \$1,005 for the one-bedroom units and \$1,050 for the two-bedroom units and a resulting rent advantage of approximately 7.5 percent. The operative market study was completed on March 31, 2026, after the NFRHA Allowances took effect on March 9, 2026, and the allowances were therefore available to the appraiser when the operative market study was prepared. In that operative market study, the appraiser concluded higher market rents of \$1,050 and \$1,150, respectively, but calculated rent advantage using the Corporation-approved energy consumption model allowances of \$108 and \$120, producing net restricted rents of \$931 and \$1,126 and a rent advantage of 7.3 percent, again short of the Rule. The operative market study's result therefore reflects the lower energy-model allowances rather than the higher Housing Authority schedule. As the Credit Underwriting Report notes, applying the higher Housing Authority allowances of \$154 and \$195 to the operative market study would reduce net restricted rents to \$885 and \$1,051, respectively, increasing the rent advantage above the Rule's 110 percent threshold. The different outcomes between the two studies reflect the appraiser's higher concluded market rents in the operative market study (\$1,050 and \$1,150, versus approximately \$1,005 and \$1,050 in the original), not any change in the allowance schedule. The Housing Authority allowances did not cure the shortfall in the original study because the market rents then concluded

were lower. Petitioner recognizes that the Corporation underwrites to the approved energy consumption model and does not base its evaluation on the Housing Authority calculation. This comparison is the Credit Underwriter's own: the Credit Underwriting Report sets out both allowance schedules and states that, while the operative market study's energy-model result does not satisfy the 110 percent threshold, application of the Housing Authority allowances would exceed it. Petitioner does not ask the Corporation to substitute the Housing Authority schedule for the approved energy consumption model, offers no alternative calculation for underwriting purposes, and does not contend that the Corporation should recompute rent advantage. Instead, Petitioner offers the comparison solely to show that the shortfall under the operative market study is a marginal artifact of allowance methodology rather than a reflection of the Development's affordability, as the Credit Underwriter itself recognizes. Petitioner submits that relief is warranted because strict application of the Rule to this Development would violate principles of fairness and impose a substantial hardship, while the objectives the Rule is designed to protect are satisfied, as set forth below in Paragraph 13, which addresses each of the three objectives the 110 percent test is designed to serve: (i) a meaningful affordability benefit to income-qualified households, (ii) the targeting of Corporation resources to a market with a genuine affordability gap, and (ii) resilience to changing market conditions.

10. The gap between Petitioner's estimated average rent and the market rent as shown in the operative market study does not satisfy the Rule by a margin of 2.7 percent, the operative market study measuring a 7.3 percent advantage against the 10 percent the Rule requires. The Credit Underwriter is prepared to recommend the Development for funding subject to Board approval of this waiver, and therefore granting this waiver would result in the Credit Underwriter finalizing the Credit Underwriting Report and the Development proceeding to firm loan

commitment. Denial of the requested waiver would impose a substantial economic hardship on Petitioner because, absent relief, the Development cannot receive a favorable recommendation or proceed to firm loan commitment notwithstanding an operative, Corporation-approved market study that falls short of the Rule by a de minimis 2.7 percent, and notwithstanding Petitioner's diligence and substantial progress to date. Petitioner does not seek, and does not contend that denial would require, a new or revised market study. To the contrary, the Credit Underwriter recommends the Development for funding and identifies FHFC Board approval of this Rule waiver, not a new or revised study, as the remaining rent-test condition to close, listing "FHFC Board approval of the Rule Waiver for not meeting the 110% rent test" among the special conditions to closing. The relief Petitioner seeks is therefore the single approval that the Credit Underwriter has identified as standing between the Development and its firm loan commitment.

11. All other material components of the credit underwriting process have been completed or substantially completed, and resolution of the market rent advantage issue is the primary remaining obstacle to issuance of the final Credit Underwriting Report and firm loan commitment. The requested waiver will allow Petitioner, the Credit Underwriter, and Corporation staff to resolve the issue related to strict compliance with the Rule and therefore complete the underwriting process in a manner consistent with Corporation requirements. As such, Petitioner hereby formally requests a waiver of the Rule in order to allow Petitioner to finalize its credit underwriting report and receive its firm loan commitment from the Corporation.

12. Under Section 120.542(1), Fla. Stat., and Chapter 28-104, F.A.C., the Corporation has the power and authority to grant waivers to its rule requirements when strict application of the rules would lead to unreasonable, unfair and unintended consequences in particular instances. A waiver shall be granted when the person who is subject to the rule demonstrates that the application

of the rule would: (1) create a substantial hardship¹ or violate principles of fairness, and (2) the purpose of the underlying statute has been or will be achieved by other means by the person. *See* § 120.542(2), Fla. Stat.

13. In this instance, while Petitioner’s original market study with the use of an energy consumption model approved by the Corporation did not satisfy the Rule, the Development advances the objectives the Rule is designed to protect. As set forth above, Petitioner does not ground its request in a disagreement over calculation methodology; it accepts that the Corporation-approved energy consumption model governs, and the resulting 2.7 percent shortfall is a marginal, methodology-driven result rather than a reflection of the Development’s affordability or its role in the market. The 10 percent rent-advantage requirement exists to confirm that a Corporation-financed development delivers a meaningful affordability benefit to income-qualified households, that resources are directed to a market with a genuine affordability gap, and that the development is positioned to withstand changing market conditions. The record developed in credit underwriting confirms each objective is met here. As noted above, the operative market study post-dates the March 9, 2026, effective date of the NFRHA Allowances. Petitioner’s showing here rests on the record developed in that operative market study, not on any later-published schedule. As to the second objective, the record confirms that Corporation resources are being directed to a market with a genuine affordability gap: although the market study observes near-term saturation for new market-rate family product, the Credit Underwriting Report’s demand analysis identifies Remaining Potential Demand of 149 income-qualified renter households within the five-mile radius and 608 within the ten-mile radius, and reports a 94.3 percent weighted-average occupancy

¹ “Substantial hardship” means a demonstrated economic, technological, legal or other type of hardship to the person requesting the variance or waiver. Further, “principles of fairness” are violated when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule. *See* Fla. Stat. § 120.542.

across like-kind rent-restricted developments in the submarket, confirming unmet demand for the rent-restricted units that the Development's 100 percent set-aside directly serves. The appraiser estimates achievable market rents of \$1,050 and \$1,150 for the one- and two-bedroom units, while the net restricted rents underwritten are \$931 and \$1,126, so restricted rents remain below market under the approved methodology. The appraiser further concludes that the units cannot achieve the maximum allowable Housing Credit rents, estimating maximum gross rents of \$1,021 and \$1,225 against the 2025 maximums of \$1,039 and \$1,246, which demonstrates a real, if narrow, affordability benefit to tenants. The like-kind submarket shows a weighted-average occupancy of 94.3 percent, above the 92 percent occupancy requirement established in a neighboring subsection of the F.A.C. (the "Occupancy Rule")². Petitioner acknowledges the operative market study's observation that the primary market area is at or near saturation for the family demographic and that projected household growth over the next five years is limited. Petitioner respectfully submits that, consistent with the Credit Underwriting Report's own separation of the demand and feasibility analyses from the rent-advantage calculation, this observation bears on the Development's overall feasibility, which the Corporation independently evaluates and retains full authority to weigh, rather than on the narrow rent-advantage measure at issue here, and that the concern is addressed by the Development's 94.3 percent submarket occupancy, its conservative underwriting, its below-market and below-maximum restricted rents, and the operating-deficit and debt-service reserves required by the Credit Underwriting Report. As to the third objective, resilience to changing market conditions is satisfied here not by projected demand growth but by structural protections that hold regardless of demand. The Development is a 100 percent rent-

² Rule 67.580072(10)(a) establishes that, as one requirement for a Credit Underwriter to make a favorable recommendation, the submarket of the proposed Development must have "An average physical occupancy rate of 92 percent or greater."

restricted set-aside, so its rents are insulated from softening in the market-rate segment to which the operative market study's saturation observation is directed. The appraiser's finding of near-term saturation concerns new market-rate family product, whereas the demand analysis confirms unmet need for the rent-restricted units the Development actually delivers, evidenced by 94.3 percent weighted-average occupancy across like-kind rent-restricted developments, above the Occupancy Rule's threshold, and Remaining Potential Demand of 149 and 608 income-qualified renter households within the five- and ten-mile radii. The restricted rents underwritten (\$931 and \$1,126) sit materially below the appraiser's achievable market rents (\$1,050 and \$1,150) and below the maximum allowable Housing Credit rents, preserving absorption headroom even if market rents decline. And should operations nonetheless be pressured, the funded operating-deficit reserve (\$255,414, approximately three months of operating expenses and debt service) and debt-service reserve, together with the Development's conservative underwriting, provide a further cushion. Critically, the objective of resilience is met notwithstanding the operative market study's saturation observation, which is directed at new market-rate family product. The Development's 100 percent rent-restricted units do not compete in the market-rate segment, and the Remaining Potential Demand of 608 income-qualified renter households within the ten-mile radius, together with the 149 households within the five-mile radius and the 94.3 percent weighted-average occupancy across like-kind rent-restricted developments, confirms sustained, unmet demand for the rent-restricted product the Development actually delivers. Therefore, demand for the Development's units does not depend on the projected household-growth rate the market study observes. The market study's observation regarding household growth bears on overall feasibility, which the Corporation independently evaluates and retains full authority to weigh, without undermining the rent-advantage objective at issue here, which the foregoing record satisfies. In

sum, the Development's rent advantage and overall market positioning still meet the Rule's objectives because (i) its restricted rents are set below both market and maximum-allowable levels, delivering a measurable affordability benefit to income-qualified households; (ii) the demand analysis confirms unmet need for rent-restricted units notwithstanding market-rate saturation; and (iii) its conservative underwriting and funded operating-deficit and debt-service reserves protect against changing market conditions. Further, Petitioner is actively and promptly undertaking the remaining steps necessary to finalize its credit underwriting report so that Petitioner can receive its firm loan commitment. Aside from the issue with the Rule, Petitioner has made substantial progress toward finalizing its credit underwriting report, with all non-market components complete. A denial of the request would result in substantial economic hardship to Petitioner as it could cause the deal to fail by allowing the Corporation to withdraw its preliminary commitment. Absent the requested relief, Petitioner risks losing the benefit of its awarded SAIL, ELI, HOME, Bonds, and Housing Credit resources, incurring additional development costs associated with further delay, and jeopardizing the timely development of ninety-four (94) affordable housing units intended to serve low-income households in Gadsden County.

14. Strict application of the numerical threshold to this Development would not further the purpose of the Rule. Petitioner acknowledges the market study's observation that the primary market area is at or near saturation for the family demographic and that projected household growth is limited; however, Petitioner respectfully submits that this concern is addressed by the Development's conservative underwriting, its 94.3 percent submarket occupancy, its below-market and below-maximum restricted rents, and the operating and debt-service reserves required by the Credit Underwriting Report, and that the concern goes to overall feasibility, which the Corporation retains full authority to evaluate, rather than to the narrow rent-advantage measure at

issue here. The requested waiver is narrowly tailored to address the unique circumstances presented here, namely a de minimis 2.7 percent shortfall under the Corporation's approved energy consumption model, which Petitioner accepts as governing, and the resulting unfairness of denying relief to this Development over that marginal shortfall. The Credit Underwriting Report separately observes that application of the NFRHA Allowances would produce a rent advantage above the Rule's threshold. Petitioner offers that observation solely as the Credit Underwriter's own confirmation that the shortfall is a methodology artifact and not as a substitute calculation or a basis for relief. Nothing in this request asks the Corporation to depart from its standard underwriting procedures, and the Corporation retains full authority to evaluate the overall financial feasibility and market viability of the Development.

15. The Corporation would benefit by granting the requested waiver of the Rule. If granted, it will allow Petitioner to finalize its credit underwriting report and receive the Development's firm loan commitment.

16. The Florida Housing Finance Corporation Act (Section 420.501, *et seq.*) was passed to encourage private and public investment in facilities for persons of low-income. The purposes of Section 420.5089, Fla. Stat. and the Act that are implemented by Chapter 67-48, as one of the goals is for Corporation financing to be used to facilitate the availability of decent, safe, and sanitary housing in the State of Florida to low-income persons and households. Further, the Act was passed in order to stimulate and prioritize initiatives to increase the supply of affordable housing. By granting the requested waiver, the Corporation would promote the goal of providing persons of low-income with affordable housing through private investment. The requested waiver will not adversely impact the Development or the Corporation or provide Petitioner with an unfair

advantage, and will ensure that the 94 affordable housing units of the Development will be made available for the target population in Gadsden County to obtain decent, safe, and sanitary housing.

E. TYPE OF WAIVER

17. The waiver being sought is permanent in nature.

F. ACTION REQUESTED

18. For the reasons set forth herein, Petitioner respectfully requests the Corporation (i) grant a waiver of strict compliance with Rule 67-48.0072(10)(b) to permit the Development to proceed notwithstanding a rent advantage calculation below the ten percent (10%) threshold and (ii) grant such further relief as it deems appropriate.

Respectfully submitted the 29 day of July, 2026.

Respectfully submitted,

Hollie A. Croft

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COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Petition was filed by electronic delivery to:

Florida Housing Finance Corporation
Attn: Corporation Clerk
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301
Email: corporationclerk@floridahousing.org

Joint Administrative Procedures Committee
680 Pepper Building
111 W. Madison Street
Tallahassee, Florida 32399
Email: joint.admin.procedures@leg.state.fl.us

This 29 day of July, 2026.

By: *Hollie A. Croft*

Hollie A. Croft, Esq.
Fla. Bar No. 886181